IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 374 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIBHAKAR MANIKANT JOSHI

Versus

ALEMBIC CHEMICAL WORKS COMPANYLTD.

Appearance:

MR NILESH A PANDYA for Petitioner

NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/12/2000

ORAL JUDGEMENT

1. The petitioner herein was working with the respondent company as a worker in tablet packing department since last more than 20 years. According to the petitioner, while he was on his duty, after completion of his duty on the relevant day, the

respondent had insisted that he should resign from the service, otherwise, he will be handed over to the police custody for stealing Sharko Feril Bottle. Hence, the petitioner, thereafter had given his resignation on 18/9/1986. Thereafter on 23/9/1986, he wrote a letter by RP.AD to the respondent requesting the respondent to allow him to withdraw his resignation, but ultimately on the ground that his resignation is accepted by the respondent, he was not allowed to discharge his duty further. The petitioner therefore raised an industrial dispute and the said dispute was referred for adjudication and was registered as Reference (L.C.V.) NO.969 of 1986. The Labour Court, Vadodara dismissed the said reference and the respondent was asked to pay legal dues of the petitioner from the date of resignation with 12% simple interest. The aforesaid order has been challenged by the petitioner in the present Special Civil Application.

2. At the time of hearing Mr. Pandya, learned advocate for the petitioner has argued that it cannot be said that the petitioner had given resignation voluntarily. He further argued that as per the standing order, 14 days notice was required to be given and during that period, the petitioner employee was entitled to withdraw his resignation. He further submitted that the petitioner had withdrawn his resignation within a period of 14 days from the date on which it was submitted to the respondent. According to Mr. Pandya even in the resignation letter, no date was mentioned and the column of date was kept blank by the petitioner. He further submitted that the resignation was under duress and since the same was withdrawn within a period of 14 days, he was entitled to serve with the management having withdrawn the said resignation.

3. Against the above submissions of Mr. Pandya, Mr. Chudgar, learned advocate appearing for the respondent argued that since the resignation of the petitioner was accepted by the management immediately, there was no question of allowing him to withdraw his resignation after the same having been accepted by the management. Regarding 14 days' time provided in the Standing Order is concerned, he submitted that since the resignation was immediately accepted by the management, there was no question on their part to wait for 14 days. Mr. Chudgar has, however, argued that this Court may not give detailed reasons ultimately if the Court is of the opinion that the petition is required to be allowed. At the request of Mr. Chudgar, therefore, detailed reasons are not given.

4. Looking to the facts and circumstances of the case, it cannot be said that the petitioner had given resignation voluntarily and in any case, it is clear that he has withdrawn his resignation before the same can be said to have been accepted within the stipulated time as per the Standing Order. The Lower Court has not properly considered the facts and circumstances of the case. It is also required to be noted that during the long service careers of twenty years, the petitioner has not found to have been involved in similar type of misconduct. Considering the totality of the circumstances, as well as considering the facts and circumstances of the case, the order of the Lower Curt is required to be set aside and accordingly the order passed by the Labour Court, Vadodara in Reference (L.C.V.) No.967 of 1986 dated 7/8/1997 is hereby quashed and set aside. The Reference of the petitioner made before the Labour Court is allowed in so far as it pertains to the reinstatement of the petitioner - workman in the service is concerned. The respondent is directed to reinstate the petitioner on his original post on or before 15/1/2001, with continuity of service except back wages. The petitioner will not be entitled to any back wages for the intervening period till 15/1/2001. It is clarified that if the management fails to reinstate the petitioner by 15/1/2001, the petitioner will be entitled to his regular salary from 15/1/2001. By the said date, the management may reinstate him in service.

Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(P.B. MAJMUDAR, J.)

Rafik